

CRITERIA USED BY BOARDS OF EDUCATION IN THE
SELECTION OF A SCHOOL ATTORNEY

An abstract of a Field Report by
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June 1979
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The problem. The purpose of this field report was to analyze the criteria for use by the members of a board of education in the selection of a school attorney to represent and advise the school district on actual or potential legal controversies.

Procedure. If a legal service was cited in the introduction to the review of related literature or in the personal interviews, the legal service was expanded in the body of the review of related literature. The body of the review of related literature, and personal interviews were conducted to develop a specific set of criteria for use as a checklist by the board of education which, in turn, are based on the type of legal services the school attorney may perform on behalf of the school district.

Findings. A list of twenty-five criteria were offered as a set of specific recommendations for boards of education to use as a checklist in the selection of a school law attorney.

Conclusions. A list of criteria was established from a review of related literature and personal interviews which the board of education may use as a checklist to select a school attorney. This is based on the type of legal service, that is, according to the legal knowledge, skills, experience, and personality, needed by the school district to resolve actual or potential legal problems.

Recommendations. The criteria established must be continuously updated, expanded, and adapted to the legal needs of individual school districts. More research is needed to learn how a school district may make better use of the services of a school attorney. This could reduce the need for legal services by anticipating potential legal problems and, thereby, practice preventative law.

CRITERIA USED BY BOARDS OF EDUCATION IN THE
SELECTION OF A SCHOOL ATTORNEY

A Field Report
Presented to
The School of Graduate Studies
Drake University

In Partial Fulfillment
of the Requirements for the Degree
Specialist in Education

by
Woodie H. Thomas, III
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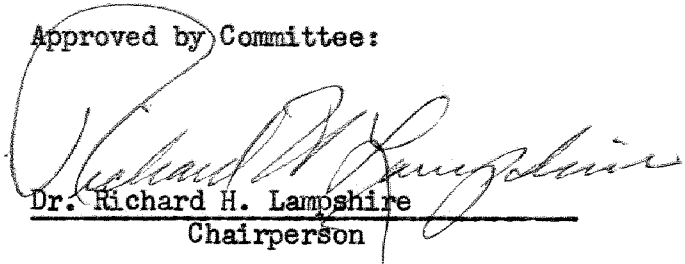
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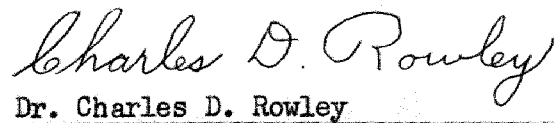
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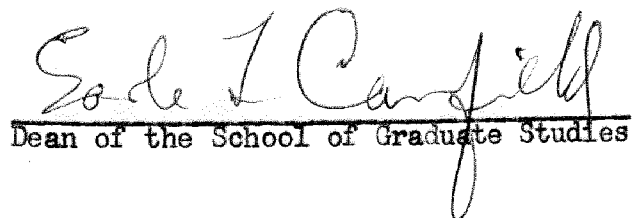

Dean of the School of Graduate Studies

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Chapter 1

INTRODUCTION

Modernly, "law" is a term used to identify and describe the changes taking place in contemporary educational policy making and planning. The traditional values of the educational process and the arbitrarily administered decision making powers of teachers, administrators, and members of the school board have come under closer scrutiny as the focal point of increased litigation. Coextensively, and as dramatically, governmental intervention has increased through state and federal legislation creating administrative regulations and other statutorily created requirements.

SIGNIFICANCE OF THE PROBLEM

Reasons for Increased Litigation

Thomas Shannon, a school law attorney from San Diego, California, wrote about the many factors which he believed have caused the courts to take a more active role in resolving problems and conflicts in education. In the past judicial sanction was given to the principle of in loco parentis. However, year after year since the case of Brown v. Board of Education, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954), there has been enough litigation directed against public schools to make them no

strangers to the court rooms which, in turn, has diminished this concept of authority.¹

Mr. Shannon stated that the judicial attitude toward public education in the United States is conditioned by five factors:

1. An increase in the importance of education. This is seen as a necessity in a modern world without the artificial handicaps of race or ethnic background.

2. An increase in the subject matter which the courts will take cognizance such as free speech, due process requirements, civil rights, etc.

3. The increasing proclivity of the public to resort to the courts. No longer are there subtle social pressures to dissuade the public from asserting their rights in the courts. Mr. Shannon places the blame and courts acknowledge our increasingly impersonal society which is seen as a real threat to the individual.

4. An efficient mass communications media by which people are becoming more and more sophisticated.

5. The inability of legislative bodies to provide all of the solutions to the problems of modern times. Legislative bodies tend to hold the majority view, but this is not so with the judiciary.²

Consequently, the courts have been creating new law rather than simply redressing alleged wrongs. Rapid social changes, political

¹Thomas A. Shannon, The New Tactics Used by Plaintiffs in Imposing Their Rights Against Public School Boards, U.S., Educational Resources Information Center, ERIC Document ED 055 314, April, 1971.

²Ibid.

turmoil, and the expanded body of school legislation indicate the need for school districts to have access to competent legal services to work in sensitive areas. There has been a subtle shift in the scope of traditional decision making powers by the administrators to the realities and complexities of legal issues that confront school districts and, in turn, further illustrate the need for competent legal counsel.¹

Legislation and Governmental Agencies--State and Federal

William Hazard wrote in "Courts in the Saddle: School Boards Out," that the myth of local control by school boards is in a terminal state because the courts at the state and federal levels, along with state and federal legislatures, have taken over. The application of law to school conflicts has changed our perceptions of the role of the school board in policy making.² School boards with their "take-it-or-leave-it" attitude have become the point of confrontation and the basis for negotiating in the courts. As a result, educational policies are the product of constitutional, statutory, and case law interpretations.³

The scope of judicial review of educational policy is practically unlimited. However, courts are reluctant to intervene in school board judgments except in clear cases of abuse.⁴ The range of policy content

¹P. M. Corkhill and P. C. Wells, "School Attorneys' Services in Public School Districts in Chicago Suburbs" (Doctoral dissertation, University of Northern Illinois, 1975).

²William R. Hazard, "Courts in the Saddle: School Boards Out," Phi Delta Kappan, LXVII (September, 1974), 259-264.

³Ibid., p. 259.

⁴Ibid.

review has included the obvious human concerns embraced in the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, as well as the entire range of constitutional aspects in the area of school operations. In addition, there is the recent trend in pupil and teacher rights which is based on the constitutional concept of "equal protection of the law".¹

William Hazard noted the decisions of Plessy v. Ferguson, 16 S.Ct. 1138(1896), and Brown v. Board of Education, supra, as illustrations of court defined educational policy which has the effect of establishing sweeping national educational policy.² Courts have also expressed words of regret in deciding cases in an area so alien to their expertise.³ The courts have expressed their desire to have the other branches of government resolve social and political problems, such as the Congress, but where constitutional rights hang in the balance the courts must accept the responsibility.⁴ In essence, by retaining jurisdiction over a case, the court acts as a de facto school board for the district.⁵

Notable examples of federal legislation directing national educational policy range from the Northwest Ordinances of 1785 and 1787 which set aside land grants for schools and colleges through the 1960's with the Elementary and Secondary Education Act of 1965.⁶ Through these Acts the federal government has made an overt attempt to influence state and local school policies on a national scale. In fact, the current trend is to increase federal intervention as evidenced by the pressures brought on

¹Ibid.

²Ibid., p. 261.

³Ibid.

⁴Ibid., p. 262.

⁵Ibid., p. 263.

⁶Ibid.

local school districts to desegregate by the Department of Health, Education, and Welfares' Office of Education.

Note that courts, generally, entirely refrain from deciding school substantive issues such as content, curriculum, and teaching practices for the obvious reason that such decisions properly belong to the legislative branch. It should be added, however, that courts do, in fact, promote school substance and school policies simply by examining disputed policies in light of statutory and constitutional meaning.¹ Mr. Hazard also noted that courts have not gone so far to say that education is a constitutional "right," but they have stated that education is a "fundamental interest".² Paralleling the courts' broad concerns for civil rights in public schooling are the states' policies for collective bargaining which have been one of the most rapidly developing areas in recent years.

Clearly, the law is a powerful force shaping education policies at the national, state, and local levels. The law just as clearly denies the mythology that educational policy making is the function of the local school board. All of these prevalent social, political, and economic conditions have created significant legal responsibility whereby contemporary educational policy makers are becoming aware of the need to avail themselves of competent legal counsel who can anticipate, prevent, and interpret potential legal consequences. In addition to keeping all members of the school community abreast of developing legal trends, the school attorney has become a necessary and integral part of the everyday school management team. Newly enacted legislation and court opinions affecting school policies and regulations in sensitive areas are fraught with

¹Ibid.

²Ibid., p. 264.

potential legal consequences requiring immediate attention by a legal technician--the school law attorney.

PURPOSE OF THE STUDY

The complex legal issues which confront everyone in the school district demonstrate the critical need to examine the types of services offered by the school law attorney; analyze the interdependent relationships among the administrators, members of the board of education, teachers, and the school law attorney as a member of the school management team; and, finally, the ultimate purpose of the study is to establish a set of specific recommendations as criteria for use in the selection of a school law attorney.

SPECIFIC QUESTIONS TO BE ANSWERED

This field report attempted to answer the following questions:

1. What types of legal services are most often needed by a school district?
2. What is the nature of the relationship among the members of the board, administration, faculty and school law attorney?
3. What criteria are used in the selection of a school attorney?

ASSUMPTIONS AND LIMITATIONS

The primary sources of information for this study were a compilation of current published sources available in print which are listed in the bibliography. All information was from personal interviews, unpublished mimeographs, and published sources found in graduate and law school libraries.

Chapter 2

DESIGN OF THE STUDY

PROCEDURES USED

Descriptive research was used to survey the related literature in order to answer the preceding questions. The type of legal services most often needed by a school district were selected from the introduction to the review of related literature. If a legal service was mentioned in the introduction to the review of related literature or personal interviews, the legal service was expanded in the body of the review of related literature. Specific recommendations were developed from the summaries in an expanded review of related literature. A set of specific recommendations should be important practical considerations for use as a checklist in the selection of a school attorney by the board of education.

SOURCES OF DATA

A systematic analysis was made of current literature from available basic library research. The only other sources of data available included:

1. An unpublished mimeograph available from the Iowa Department of Public Instruction;
2. Two personal interviews conducted with school attorneys, and
3. Statutory and case law material, both state and federal, are cited where appropriate.

METHOD OF GATHERING DATA

After the review of related literature, the data gathered was used to develop a specific set of recommendations for use by the board of education in the selection of a school law attorney.

Chapter 3

REVIEW OF RELATED LITERATURE

INTRODUCTION

Books dealing with the criteria used in the selection of the school attorney are rare. In fact, only one book by M. A. McGhehey entitled The School Attorney specifically dealt with the problem. No other single source provided as much data and information on the role, selection and retention of the school law attorney. The book was also the only single source which attempted to specifically list the criteria used by boards in the selection of a school law attorney. The list was a long one but was not exhaustive and needed updating in light of the rapid changes taking place in all phases of the law and education. The list included continuing legal education, financial arrangements, litigation, and general legal counsel. A job description and sample retainer agreement offer guidelines which may be helpful if adapted to the needs of the individual school district (see Appendices A and B).

Avoiding Teacher Malpractice by Rennard Strickland, Janet and William Phillips was an excellent source book for adding to the body of literature relative to the types of legal services which may be provided by the school law attorney. The text provided a basic working knowledge of the law with advice as to policies and procedures on how to avoid teacher malpractice. This type of needed information provided some of the criteria which members of the school board should consider in the

selection of a school law attorney. Legal services included employee negligence, students' rights, employee termination and nonrenewal, and corporal punishment.

Two doctoral dissertations proved most helpful. "School Attorneys' Services in Public School Districts in Chicago Suburbs," by P. M. Corkhill and P. C. Wells was an incisive study into the areas in which the school attorneys should possess expertise such as the state code, professional negotiations, labor management, contract law, municipal law, school finance, union contracts, and civil rights law. The study eliminated areas infrequently handled by the school attorney such as special bonding attorneys or special attorney negotiators. Areas of writing board policies, preparing and checking bid specifications, developing the school budget, helping in school plant planning, public relations, and negotiations with noncertified personnel were least likely to require the attention of the school attorney. The study also noted that superintendents reported that the school attorneys were most commonly employed in regard to matters in the areas of preparing bond issues, representing the board in litigation, providing general legal advice, condemnation procedures, and preparing special board resolutions. The study noted that the larger districts did not report a much greater requirement of school attorney services than the smaller districts.

Gayle Hurlbert in "A Study to Determine How Decisions Relating to Legal Matters Are Made Within the School Context in Nebraska" showed that about 80 percent of the superintendents involved in the study did not preview board agenda with legal counsel.

ERIC documents proved an abundant source for research articles and other particles relating to the legal services a school district may

acquire and, in turn, provided most of the data for the development of criteria used as a checklist by school boards in the selection of a school attorney. The various articles usually dealt within problem areas which an attorney could help to prevent or remedy and within which attorneys had experience in school districts resolving legal entanglements. The ERIC documents provided no new legal services, but they did help expand the concepts heretofore determined and further illustrated the necessity to include the concept as a criteria for use in the selection of a school attorney. The summaries of the various legal services which appear below effectively review these documents.

The law library was abundant source of legal material on law and education, but little information existed on the criteria for use in the selection of the school attorney. The Iowa Code and other state codes, however, provided the basic statutory authority for retaining the services of a school attorney, the appeal process through the state education commission in legal matters such as an administrative agency, the use of the county attorney and the State Attorney Generals Office for some decisions regarding clarification of the various state codes relating to the school district.

The American Law Reports Annotated 2d. Series (ALR 2d.) did have one report that discussed the criteria relating to the "Power of School District or School Board to Employ Counsel". The report discussed the various criteria which has been litigated in each state. Generally, an attorney, other than the county attorney or state attorney general, could be retained to represent the school district when the school district and administrator, staff or board member were directly involved.

American Jurisprudence (Am. Jur. 2d.) is a topical legal encyclopedia which has as one of its headings "Schools". This was an invaluable legal tool used to locate the statutory and case law material relating to the various types of legal controversies which have gone through the legal process. After the areas of potential legal liability were determined in Am. Jur. 2d., they were used to understand the nature of the law in that area and then the various legal authorities were cited which set precedence in those areas.

Professional journal articles on the selection of the school attorney were limited. In fact, only one article was found which specifically dealt with this study and was entitled "The Role of the School Board Attorney" by Edgar H. Bittle. The article was concise and based on years of actual experience as both a legislator and school law attorney. His insight added to an understanding of the role of the school law attorney as to the various legal services which could be performed and what criteria should be used for the selection of the school attorney. Mr. Bittles' article touched on such areas as review of board policies and administrative regulations, review of board agenda, attorney as board member, attendance at board meetings, and litigation.

"Courts in the Saddle: School Boards Out," by William R. Hazard was a journal article that demonstrated the importance of a school district to retain a competent school law attorney rather than attempting to deal with the complex legal problems facing school districts today.

Personal interviews provided fruitful information where published sources of information were generally lacking. Specifically, personal interviews provided an opportunity to ask questions relating

to the areas of expertise, that is, as to the types of legal services and skills which are required to provide competent legal representation for a school district and what, in their estimation, were important practical criteria for use in the selection of a school law attorney.

Edgar Bittle and Richard Gatti, both school attorneys, were asked to comment and delete, add or modify from the list of legal services derived from the related literature which, in turn, were used as data to establish the criteria for selecting a school attorney. Generally, their comments confirmed the topic areas most often mentioned in the review of literature.

The single best source of related literature for this field report came from an unpublished mimeograph by Larry Bartlett entitled "School Administrators and Attorney Relationships". Mr. Bartlett is an attorney with the Iowa Department of Public Instruction. His insight and experience were extremely helpful in determining the various legal services in which a school district finds itself involved and, in turn, helped establish the criteria used in the selection of a school attorney. Mr. Bartlett also added comments about the various relationships between the parties which cannot be learned from a textbook, but only from years of experience in dealing with the legal problems found in the school district. The mimeograph discusses such legal services as bonding and finance, reorganization, employee termination and nonrenewal, transportation, contracts, administrative agencies, legislation, hiring the school attorney, dismissing the school attorney, procedures for attorney contact, and attendance at board meetings.

The types of legal services most often needed by a school district fell into three categories:

1. Attorney Participation

- a. Review of Board Policies and Administrative Regulation
- b. Review of Board Agenda
- c. Bonding and Finance
- d. Reorganization
- e. Public Employee Collective Bargaining
- f. Employee Termination and Nonrenewal
- g. Employee Negligence
- h. Corporal Punishment
- i. Student Rights
- j. Transportation
- k. Contracts
- l. Administrative Agencies
- m. Legislation

2. The Relationship

- a. Hiring the School Attorney
- b. Financial Arrangement
- c. Dismissing the Attorney
- d. Procedures for Attorney Contact
- e. General Legal Counsel
- f. Attorney as Board Member
- g. Attendance at Board Meetings
- h. Litigation
- i. Continuing Legal Education

3. The Attorney As a Member of the School Management Team

The remainder of the review of related literature which follows was used to expand the type of services most often needed by a school district. These data, in turn, were used to establish the criteria necessary for the selection of the school law attorney.

INTRODUCTION: THE SCHOOL LAW ATTORNEY

Contemporary educational policy making is now predominantly made in the courts and legislatures. Lawyers are trained as legal technicians to understand the nature of the legal system and its implications for the

educational process. In the past, school law was considered just a small part of a lawyer's practice. Today, however, with the advent of the developing complexities of the legal system as well as that of educational institutions, specialists are the rule rather than the exception. The school law specialist is no exception and some law firms find as much as 50 percent of their client services are directly related to work involving school districts. Traditionally, this once amounted to only about 5 percent of a firm's time. Not only is there a definite need to keep schools abreast of current legal trends, but administrators find the need to bring the school attorney into the decision making team. Shannon in The Attorney: A Member of the School Management Team? wrote that the school law attorney should now be considered as an indispensable element in the decision making process in all school districts.¹

The school attorney's advice is not a guarantee of flawless legal decision making, but it does create a greater degree of certainty, which allows administrators to spend more time in educational administration and less time worrying about potential lawsuits.²

ATTORNEY PARTICIPATION

Edgar Bittle, a Des Moines, Iowa, attorney and state legislator, stated in a personal interview that administrators and board members should keep in mind that the constant goal of the school law attorney is

¹Thomas A. Shannon, The Attorney: A Member of the School Management Team?, U.S., Educational Resources Information Center, ERIC Document ED 082 366, October, 1973.

²Ibid.

one of preventative law.¹ The most valuable service the school attorney provides lies in the ability to keep the school district out of legal entanglements.

If school boards attempt to depend upon themselves or their own membership in lieu of the services of a competent school attorney, they invite the risk of constant litigation and the accompanying unnecessary and costly delays in meeting educational needs and commitments wrote Larry L. French in The Role of a School Board Attorney.² An ounce of prevention through the use of a school attorney as a friend is equal to a pound of cure in the courts and the corrective measures within the school system as a result of the application of a legal decision.³

Larry French has developed the "doctrine of preventive litigation" which is a premise involving four important points:

1. The promulgation of a sound set of updated reasonable and relevant rules and regulations;
2. The preservation of all documentation in an orderly fashion;
3. Membership in organizations designed to further the interest and goals of school boards and administrators with respect to the competent and efficient operation of their school system;
4. The continued retention of competent expertise, including, but not limited to accountants, architects, attorneys, etc.⁴

A number of practical situations are generally considered most valuable and appropriate for participation of the school law attorney.

¹Statement by Edgar H. Bittle, Attorney, personal interview, Des Moines, Iowa, July 28, 1976.

²Larry L. French, The Role of a School Board Attorney, U.S., Educational Resources Information Center, ERIC Document ED 104 029, Feb., 1975.

³Ibid.

⁴Ibid.

Review of Board Policies and Administrative Regulations

Larry Bartlett in an unpublished mimeograph entitled "School Administrators and Attorney Relationships" stated that in the past boards of education have been the primary formulators of local school policy, yet, today, other authorities, such as the courts, legislatures, and administrative agencies are playing an increasingly greater role in educational policy formulation.¹ An attorney should regularly review both local policies and regulations to see that they are not in conflict with the law. If an attorney reviews policies and regulations, a determination can be made as to what extent school board decisions are solidly based on the law. This precaution can help prevent unnecessary litigation and will help prevent the board from being placed in a position of later backing down and risking loss of credibility that could have only an adverse effect on board relationships with students, staff, and the taxpayers.²

Removal of ambiguous language and legal imperfections should aid general operating procedures and give school administrators more confidence in carrying out their duties. In most areas of school law, there is considerable latitude for administrative experimentation and development of regulations suited to individual school district needs. Mr. Bartlett stated that attorneys should not write policies and opinions, they should only review them.³

¹Larry Bartlett, "School Administrators and Attorney Relationships" (Des Moines: Iowa Department of Public Instruction, 1975), p. 1.

²Ibid.

³Ibid.

A review of board policies and regulations should be completed on an annual basis. Rapidly developing areas of law such as student and teacher rights should be subject to review more often. This will aid administrators in carrying out their duties, especially when a potential legal crisis arises and the attorney is not immediately available. If a lawyer/administrator were a member of the school management team, many of these updates and client services could be performed routinely.¹

One of the more serious concerns is the personal liability of school board members in the light of the United States Supreme Court ruling in Wood v. Strickland, 420 U.S. 565, 95 S.Ct. 992(1975), and the provisions of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §983. The potential liability of school board members must be examined. A school law attorney could suggest how a school board should operate to avoid liability problems and discuss possible steps a school district may take to protect its board members from personal financial loss.² The pros and cons of purchasing liability insurance coverage for school board members should also be considered.³

Review of Board Agenda

A recent study at the University of Nebraska showed that about 80 percent of the superintendents involved in the study did not preview board agendas with legal counsel.⁴

¹Ibid.

²Ibid., p. 2.

³Ibid.

⁴Gayle H. Hurlbert, "A Study to Determine How Decisions Relating to Legal Matters Are Made within the School Context in Nebraska," Department of Educational Administration, University of Nebraska, July, 1973.

However, most superintendents did consult with attorneys when they recognized potential problems in matters coming before the board. This is not sufficient. Whether or not the attorney regularly attends meetings, stated Mr. Bartlett, he or she should always be consulted sufficiently in advance to enable the attorney to point out potential problems, and if necessary, prepare an opinion.¹ An attorney's review not only aids in identifying potential legal problems, but enables the superintendent to clarify and update problems that he or she must present to the board.²

Bonding and Finance

Bartlett in his unpublished mimeograph stated that "even though the technical work in bonding and school finance is normally left to specialists such as bonding attorneys, the school attorneys should review their advice."³ The attorneys' advice can often prove invaluable and result in financial savings for the school district due to the attorneys' legal and business experience.⁴ A case in point occurred in the spring of 1977 in a Chicago, Illinois, suburb as reported in the Dupage County News where a school district had proposed a bond referendum. Two days before the voting was to take place the superintendent learned that the legislature in the last legislative session had raised the ceiling on the number of mills a school district could impose on property. The election was postponed for two reasons: (1) even if the bond proposal had been successful it would not have raised enough funds to prevent a cut-back in staff and services for which the school district had made

¹Bartlett, op. cit., p. 4.

²Ibid.

³Ibid., p. 6.

⁴Ibid.

extensive plans to implement; and (2) another bond referendum could not have been proposed for at least a year. If an attorney had been consulted, who was a school law specialist, that is, one who regularly follows recently enacted legislation affecting schools, this problem could have been averted.

Reorganization

Bartlett pointed out in his unpublished mimeograph that reorganization requires the close cooperation of administration and the attorney.¹ The drafting of necessary documents must be done very carefully. There are numerous cases involving difficult legal questions that competent counsel could have prevented and thus saved the district complicated and expensive litigation.²

Public Employee Collective Bargaining

Hugh D. Tascourt in a study found in the Journal of Law and Education entitled "Finding in Public in Education Negotiation Disputes: An Overview" pointed out that over thirty-three states now have statutes authorizing public employees the right to join and be represented by unions, and details certain prohibited practices by employees, employee organizations and public employers which are generally comparable to those of the National Labor Relations Act (commonly referred to as the Wagner Act of 1933).³ These statutes establish a public employment relations board to investigate, hear and decide prohibited practice complaints,

¹Ibid., p. 7.

²Ibid.

³Hugh D. Tascourt, "Fact Finding in Public Education Negotiation Disputes: An Overview," Journal of Law and Education, III, No. 2 (April, 1974), 263.

subject to review by state courts, and provide that "boards" shall make appropriate unit and voting eligibility determinations as well as conduct elections.

Generally speaking, all strikes are unlawful and may be enjoined by appropriate state district courts. Many of these laws also provide that public employees may be discharged for striking when found in contempt by a court for failing to obey a court order to return to work.

Contract negotiations are a major feature of collective bargaining. The scope of mandatory, permissive and illegal subjects is generally set out in state statutes.

If the parties are unable to find a basis for a mutually acceptable agreement, mediation is the usual mechanism to assist parties in trying to reach an agreement. In the mediation process, the mediator does not attempt to impose an agreement, as in arbitration, but tries to induce the parties to reach a decision. If a decision is not reached in the public sector, a strike is repugnant because it is considered a danger to the public health, safety, and welfare.¹

To avoid a strike many jurisdictions have imposed compulsory arbitration. This means that a mutually agreed upon third party conducts a hearing and then, generally, makes "findings of fact and conclusions of law" which are binding on the parties. However, before arbitration begins, fact-finding of issues usually takes place.² The factfinder makes findings of fact which are recommendations for a settlement, but are not binding on the parties.

These techniques are new to public service and have received mixed reviews. They were developed and used as a result of the Taft-Hartley Act in

¹Ibid., p. 265.

²Ibid., p. 268.

the private industrial labor relations sector. State laws vary with the nature of fact-finding. In addition, such questions arise as to whether mediation is a necessary condition precedent, before arbitration, or whether the fact-finder can engage in mediation, or whether public recommendations are permitted, and the legal consequences for parties who reject the recommendation, as well as the criteria the fact-finder must use.¹ There are many variations employed by different groups. It would appear that the mechanism employed would depend on the experience of the fact-finder and/or the nature of the interests involved that brought about the impasse.

Any requests for negotiation by employees should be reviewed with an attorney prior to taking action on the request. It may very well be that the school board and administrators may discover too late that they are negotiating items which are not required to be negotiated, and there are many instances where employees have requested bargaining on matters determined by the courts not to be proper items of negotiation.² Once a contract is negotiated, an attorney may be called upon to administer or otherwise interpret the terms for school management personnel.³ The school attorney may also be called upon for advice and information regarding the rights to employers and employees and unfair labor practices.⁴ In fact, administering the contract can be as difficult, if not more difficult than contract negotiations.

Many school districts have found it valuable to include the school attorney as leader of the negotiating process.⁵ The combination of legal

¹Ibid.

²Bartlett, op. cit., pp. 2-3.

³Ibid.

⁴Ibid.

⁵Ibid.

knowledge, particularly in labor law, coupled with adversarial skills and experience in negotiating are invaluable tools in the negotiation process.¹ However, unless the attorney is familiar with the school district and its individual needs as to personalities and the fiscal budget, it is recommended by many authorities, educators and attorneys alike, that the superintendent should be the lead negotiator because of the superintendent's knowledge of the district and relationship to the school board and the teachers.² In addition, there is still some question whether the power to negotiate is a duty which can be delegated to someone who is not a school official because the activity is not ministerial, but discretionary. Yet, if the attorney was a member of the management team as a lawyer/administrator this problem could be avoided.

Employee Termination and Nonrenewal

There are court cases which have established required legal standards for due process as it relates to students, teachers and administrators.

The Fifth Amendment to the Constitution protects the individual citizen and guarantees that no person shall be deprived of life, liberty or property without the "due process of law". This federal constitutional law was made applicable to the states when incorporated through the Fourteenth Amendment. ". . . due process is the cornerstone of our civil liberties to protect our constitutional civil rights, . . ."

stated Chester M. Nolte from Due Process for Students, Teachers and

¹Ibid.

²Ibid.

Administrators in Suburban School Districts.¹

John I. Purtle in "Will Your Due Process Procedures Keep You Out of Court?" wrote about the history of due process which goes back to Runnymede in 1215 when King John had to relinquish some of his powers to imprison men without the judgment of his countrymen, that is, due process.² As far as history is concerned it was an attempt to equalize the natural inequities found in our environment.³

The difficulty with due process is defining it. It is circumstantial, evasive, and determined on a case-by-case basis. As time passes, more case law is developed and a richer understanding develops as to the definition of due process.⁴ Two elements are necessary for recovery under the terms of a statute or rule which allegedly deprives an individual of rights. First, the plaintiff must show how a defendant was denied a right to a law secured to that person by the Constitution or a law of the United States. Second, the plaintiff must show that the defendant deprived that person of this right under "color of state law".⁵

As to teachers and due process, a teacher does not have a right to work for the state, but where a person is already employed, the school

¹Chester M. Nolte, Due Process for Students, Teachers and Administrators in Suburban School Districts, U.S., Educational Resources Information Center, ERIC Document ED 081 102, July, 1973. See also, John I. Purtle, Will Your Due Process Procedures Keep You Out of Court?, U.S., Educational Resources Information Center, ERIC Document ED 123 740, April, 1976.

²Ibid.

³

Ibid.

⁴Ibid.

⁵

Ibid.

board may not terminate employment for an impermissible reason, or on grounds other than that which they select as the basis for their action.¹ Larry Bartlett stated:

In no other area of school law can a good relationship between attorney and administration do more to eliminate or lessen serious legal complications than in termination and nonrenewal of employees. A school attorney can be of continuing assistance by advising the superintendent on problems as they arise. When desired, the superintendent can arrange staff administrator's meetings with the attorney to discuss their problems.²

Termination and nonrenewal is often made more difficult and unsuccessful because of insufficient or improper documentation. A review of evaluation methods by an attorney as to the type of records which need to be kept for proper dismissal and nonrenewal will create a greater chance of success. Advance preparation and consultation with an attorney will establish the necessary criteria and alleviate many problems regarding dismissal.³

The school attorney should be present at any hearing or other determinations of termination and nonrenewal. The teacher should be informed of the opportunity to be represented by legal counsel, notice of hearing, reasons for termination or nonrenewal, to cross examine witnesses, and an opportunity to be heard. The school attorney's ability to render legal assistance in this sensitive area is invaluable and the board should lessen or eliminate the more serious legal consequences.⁴

¹ Ibid. See Perry v. Sindermann, 446 F.2d. 806, Roth v. Board of Education, 408 U.S. 564, 408 U.S. 593.

² Bartlett, loc. cit.

³ Ibid., p. 4.

⁴ Ibid.

The previous material sets forth the basic due process requirements whereas the following material summarizes a method implemented by one school district in an eastern state relative to meeting due process requirements.

Roger A. Place in Removing the Incompetent Practitioner wrote that when a teacher fails to meet acceptable performance standards, it is an arduous task to satisfy the board and the courts that the teacher is incompetent. The objective of any school system is thoroughness which safeguards against the court from substituting its own judgment as to what constitutes incompetence.¹

The principal of a school initially identifies significant deficiencies as marginal or unsatisfactory. A cooperative conference is arranged for the purpose of analyzing the deficiencies. Thereafter, a letter is sent by the principal summarizing the conference. The reports are then sent to the Deputy Superintendent and the Personnel Director of Secondary or Elementary Education.²

At the beginning of each school year the principal sets forth a "plan of action" which form the management objectives. The names of teachers needing improvement are submitted with the plan or are added later. Conferences are held periodically for the purpose of making improvements which, in turn, culminate with a summary made in December by the principal and reports are again submitted to the aforementioned individuals.³

¹Roger A. Place, Removing the Incompetent Practitioner, U.S., Educational Resources Information Center, ERIC Document ED 088 237, February, 1974.

²Ibid.

³Ibid.

A Teacher Efficiency Evaluation Committee meets to review teacher performance and management objectives. Central office administrators are used which is considered an excellent plan as the final decisions are not within the immediate administrative or teaching staffs where individual bias could cause conflicts in the operation of the school. The committee makes a formal recommendation which is usually in the form of a detailed plan for improvement. This is especially important in first-time cases of incompetency. This is a rigorous plan calling for complete cooperation and utilization of personnel to assist in guidance and establishing conferences to assess achievement and aid in reaching desired objectives. These conferences are summarized again in reports and resubmitted to the previously-named groups.¹

Evaluation is monthly until March when the teacher is removed by the committee from any further consideration or is recommended for probation or suspension. In the latter situation, the case is turned over to the superintendent for initiation. If the superintendent finds the recommendations warranted, a hearing is held by the school board and the teacher may be represented by legal counsel or the State Education Association.²

The legal counsel for a district may suggest that school board action for probation as well as dismissal is necessary to insure that constitutional rights of "good faith" and due process of law are observed. The school counsel should conduct the inquiry which is usually private unless publicly requested. A stenographer should make a record

¹Ibid.

²Ibid.

of the proceedings. The school counsel may also suggest that to corroborate all of the above, it is wise to secure written teacher and parent complaints because it helps to quiet those who have a tendency to rally to the teacher's side.¹

Although these procedures have not been court tested, they should satisfy the basic requirements of due process outlined earlier. The evaluation must be distinguished between a teacher's performance from class meeting to class meeting. Distinctions must show deficiencies between content to be learned by students and deficiencies in teaching methods. A performance based curriculum with clearly defined content to be learned and expected outcomes will help to be definitive of teacher evaluation.²

Although this approach is time consuming, it is constructive and necessary to avoid arbitrary decision making based on a myriad of factors other than the competence of the teacher.³ Such thoroughness tends to bring a staff closer together in a supportive role and creates a stronger staff through an understanding of each other's needs.

Employee Negligence

Bartlett in his unpublished mimeograph summarized employee negligence as follows:

Early consultation with an attorney and regular review of the district's procedure in handling instances of potential negligence liability may save the school district a great deal of time, money, and embarrassment. Gathering and organizing facts as early as possible is very important because early and

¹Ibid.

²Ibid.

³Rennard Strickland, Janet Frasier Phillips, and William R. Phillips, Avoiding Teacher Malpractice (New York: Hawthorn Books, 1976), p. 140.

proper investigation often means the difference between winning and losing a lawsuit. The wording or communications, both public and with potential parties, such as parents of injured students, should be reviewed by an attorney in all instances of potential litigation. Liability insurance coverage should be periodically reviewed with an attorney.¹

Corporal Punishment

The courts have declared corporal punishment constitutional, but they do not sanction child abuse² (Ingraham v. Wright (CA5 Fla) 525 F. 2d. 909, cert gr 425 U.S. 990, 48 L.Ed. 2d. 815, 96 S.Ct. 2200). Parents do have the veto power to prevent corporal punishment, but they could be held in contempt of court if the parents then fail to discipline and control the child.³

Since courts are currently reviewing corporal punishment procedures with various results, that is, depending on the particular factual situation, an attorney should review school policies and procedures regarding physical punishment of students.⁴ A review of policies should be made in cooperation with the attorney and staff as soon as the courts hand down decisions.

Student Rights

Student rights are a rapidly developing area and are often misunderstood by administrators. For instance, most school authorities are surprised to learn that searches and seizures are legal as to students and lockers if courts find the circumstances reasonable.⁵ It has been held

¹Bartlett, op. cit., p. 5.

²Ibid. See Ingraham v. Wright, 97 S.Ct. 1401. ³Nolte, loc. cit.

⁴Bartlett, loc. cit.

⁵ERIC Abstracts: ERIC Document Resumes on Student Rights and

that a principal may search a locker without a search warrant since the administrator stands in loco parentis, State v. Stein, 456 P. 2d. (Kansas, 1969).¹

Most state laws deal with suspension and expulsion of students are deficient in their lack of procedural due process, and many school administrators, swamped with information on student rights, would be pleasantly surprised at the information a school attorney could furnish to staff and students on student responsibilities.²

In Wood v. Strickland, supra, the Supreme Court ruled that in the specific context of student discipline school board members could be held personally liable under 42 U.S.C.A. section 1983 (the 1871 Civil Rights Act) if they were found to have acted maliciously toward a student or if they were found to have knowingly or unknowingly violated the settled and indisputable constitutional rights of a student.³ Obviously, this decision focuses attention on the overall liability to which school districts and their boards of education are potentially liable. Russell R. Graham in School Board Member Liability, Who Is Liable? Who Is Not Liable? What Can Be Done About It? advised that in order to avoid liability the school attorney should review any policies currently affecting student

Responsibilities. ERIC Abstract Series, Number 34, U.S., Educational Resources Information Center, ERIC Document ED 120 893.

¹Ibid.

²Nolte, loc. cit.

³Russell R. Graham, School Board Member Liability, Who Is Liable? Who Is Not Liable? What Can Be Done About It?, U.S., Educational Resources Center, ERIC Document ED 116 280, 1975.

rights and periodically review such policies.¹ Insurance protection against board member liability is a legitimate proposition, wrote Martin Haberman in Students' Rights: A Guide to the Right of Children, Youth and Future Teachers, because the policies presently in effect will present serious difficulties and should be brought in line with recent court decisions as any advantages believed derived from such policies are outweighed by the potential legal consequences.²

A student Bill of Rights is eminent and within the very near future student rights will be expended further in such areas as freedom of expression, search and seizure, dress and grooming, invasion of privacy, discipline; and in such areas as "the right to prior knowledge of course goals," the right to exemptions and credit exams, right to trial by a jury of peers, the right of petition; and the right to see one's record and evaluations (which have since become law by federal statute under the Buckley Amendment).³

Transportation and Insurance

Provisions for student transportation are generally determined by statute. Franke J. Allyn in Tort Liability and School Transportation

¹Bartlett, op. cit., p. 4.

²Martin Haberman, Students' Rights: A Guide to the Right of Children, Youth and Future Teachers, U.S., Educational Resources Information Center, ERIC Document ED 070 752, Sept., 1972. See also 20 U.S.C. 1232g (1974); Larry L. French, The Access to Student Records Act (The Buckley Amendment - H.R. 69), U.S. Educational Resources Information Center, ERIC Document ED 120 951, 1975. Larry French examines the main aspects of the Buckley Amendment, giving special attention to the definition of "educational record" and to the ten instances in which an institution may release information about a student without the student's consent.

³Ibid.

stated that proper reporting procedures must necessarily be established, and a good working relationship with a school attorney would enable the administration to anticipate the few complicated issues that arise and thus, alert the administration when to contact the attorney.¹

A primary concern is with civil rights insurance or "wrongful acts" insurance. All school districts, and bus companies with sub-contracts, should notify their insurance carriers to carry the maximum protection which is comparatively little in terms of cost. Damages are not considered the greatest threat because they are not substantial in civil rights cases, but the cost of litigation is, even if the defendant wins.²

A potential problem exists when a student is excluded from riding on a school bus because his civil rights are allegedly being abridged. This is based on the fact that all students have the right to ride the school bus. The burden of proof is on the school system to show why the student should be excluded from his or her right to ride on the bus (see Student Rights, supra). This presents a difficult situation because the driver often has a vague recollection of when instances resulting in an injury took place that eventually led to the expulsion of the student.³

To remedy the situation, drivers should be asked to fill out reports so that they will have documented evidence sufficient to show the reason or reasons for the expulsion of the student from the bus. If

¹Franke J. Allyn, Tort Liability and School Transportation, U.S., Educational Resources Information Center, ERIC Document ED 084 637, October, 1973.

²Ibid.

³Ibid.

the problem is recurring and the budget permits, another suggestion is to have a monitor ride on the bus or a paraprofessional to control the student's behavior.¹

Notice requirements are extremely important too. Incidents which may involve insurance coverage must be promptly reported on forms provided by the insurance company. Failure to make such a report could result in a loss of coverage for not conforming to the policy requirements.² For example, loss of insurance protection occurred in one incident where it appeared that a young man was only slightly injured in a fall on the school bus and it was not reported by the bus driver. As it turned out, a few months later, the student developed back trouble and two years later was severely disabled. This development was attributed to the bus accident by expert medical testimony. Insurance coverage was not allowed because of the administration's failure to give timely notice to the insurance company as stipulated in the policy. The potential loss was in the hundreds of thousands of dollars.³ Insurance companies may provide time limitations which may be shorter than state statutes of limitation. These shorter statutes of limitation have been upheld in the courts.

Administrators must be cognizant of appropriate insurance reporting procedures and should immediately file accident forms that could be subject to insurance claims. This also means that bus drivers and teachers must be aware of the importance of filing such reports.

¹Ibid.

²Ibid.

³Ibid.

Contracts

Bartlett wrote the following about contracts:

All contracts, especially construction contracts, should be discussed with counsel before official action is taken. Much of the law dealing with contracts is statutory and is strictly construed. A general review of all contracts will enable the attorney to revise those which may be detrimental to the school district. An attorney can advise on the proper use of district funds. All contracts should be discussed well in advance of letting and an attorney should supervise the letting of contracts on a bid basis if that method is to be used. A contract improperly entered into is void.¹

Special care should be taken when reviewing employment and service contracts. School districts that use form contracts in special employment circumstances often find such agreements as the cause of avoidable litigation and unfortunate results.²

Administrative Agencies

School issues are brought before administrative agencies more than ever before, and the trend is increasing in areas such as collective bargaining and desegregation. Administrative agency law and concepts are becoming increasingly complex and many school administrators believe that they have the knowledge and experience to appear before administrative agencies.³ However, if the proceedings are in any way adversarial in nature, it is best to be represented by a professional advocate, the school attorney.⁴

Legislation

Bartlett wrote that school administrators should not hesitate to contact the school attorney in regard to the potential implications of

¹Bartlett, op. cit., p. 6.

²Ibid.

³Ibid., p. 5.

⁴Ibid.

proposed legislation as the effect of such legislation upon school governance may not always be clear.¹ Districts may find it beneficial to have their attorneys review proposed legislation before it is presented to the legislatures.² At times a local school administrator will exert more influence through personal contact with a legislator than with paid lobbyists.³ In fact, a telephone call by a superintendent to a representative in the state legislature has been known to change the entire complexion of an important bill to be more favorable to the administration's point of view.⁴

THE RELATIONSHIP

Hiring the School Attorney

The responsibility for hiring an attorney lies with the school board.⁵ Edgar H. Bittle in his article "The Role of the School Board Attorney" stated that a school district may: (1) employ full-time legal counsel on the district payroll, (2) become a client of a law firm, (3) hire an individual attorney on a retainer or an hourly basis, or (4) the district may use a combination of arrangements.⁶ Once the decision is made as to the basic arrangement it will employ, the selection process is still difficult. The superintendent should make the

¹Ibid., p. 4.

²Ibid.

³Ibid., p. 5.

⁴Ibid.

⁵"Power of School District or School Board to Employ Counsel," American Law Reports Annotated 2d. Series (Rochester, New York: Lawyer's Cooperative Publishing Company, 1961 to date), 75 ALR 2d. 1339-1360.

⁶Edgar H. Bittle, "The Role of the School Board Attorney," Iowa Association of School Boards Dialogue (May/June, 1975).

final recommendations and give supportive reasons.¹ (See Appendix A for a Position Description of the School Attorney and Appendix B for a sample Retainer Agreement.)²

There are advantages and disadvantages to having a full-time legal counsel on the school district payroll and to the employment of counsel by retainer wrote McGhehey in his work The School Attorney.³ In reaching a decision, the board of education needs to weigh many considerations. The advantages of a full-time legal counsel are discussed elsewhere, see C. THE ATTORNEY AS A MEMBER OF THE SCHOOL MANAGEMENT TEAM, *infra*, but it is important to summarize here: (1) that through continuous contacts with members and administrative staff of the school, the full-time counsel will have a greater opportunity to understand the inner workings of the school district and the complex internal relationships, and (2) that legal counsel is immediately accessible when needed, particularly in crises situations, where time is a critical factor. The major disadvantage is that the district demands for legal service may vary from one month to the next. Each school district, large or small, must weigh advantages and disadvantages to reach a decision as to what type of arrangement would best suit their individual needs.

The general practice is to hire a law firm to represent the school and then work regularly with one or two members of the firm. Most law

¹Chester Nolte, Duties and Liabilities of School Administrators (New York: Parker, 1973), p. 55.

²M. A. McGhehey, The School Attorney (Washington, D.C.: Administrative Leadership Service, Educational Service Bureau, Inc., 1969), pp. 40-45.

³*Ibid.*, p. 38.

firms have informal specialization in their practice that will allow the school attorney to confer with associates in their areas of specialization and experience.¹ Inhouse counsel will likely continue to use outside legal counsel for litigation and specialized legal problems.²

A study by P. M. Corkhill and P. C. Wells, "School Attorneys' Services in Public School Districts in Chicago Suburbs (hereinafter cited as Corkhill and Wells)",³ determined that the board resolution and the verbal agreement were the most common types of employment arrangements.⁴ The superintendents believed that admission to the Bar was not an adequate background for a person to serve as a school attorney, however, the majority of school attorneys believed the contrary.⁵ Both groups stated that the school attorneys should possess a firm understanding of the state code, professional negotiations, labor management, contract law, municipal law, school finance and civil rights law.⁶

The study by Corkhill and Wells concluded that: (1) there exists an interest by superintendents and school attorneys regarding the status and functions of the school attorney; (2) they agreed that the overall relationships among the boards of education, the superintendents, and the school attorneys were good; (3) a need exists to develop specificity in employment arrangements; (4) there was little evidence that school attorneys were attempting to intrude upon the educational scene by exerting an "extra-legal" influence upon the boards; (5) law schools place little

¹Bartlett, op. cit., p. 8.

³Corkhill, op. cit., p. 4.

⁵Ibid.

²Ibid.

⁴Ibid.

⁶Ibid., p. 6.

emphasis upon preparing their students for a career as a school attorney; and (6) the various state support offices to education have not provided much assistance for school attorneys and superintendents regarding the resolution of legal problems and school law.¹

The same study by Corkhill and Wells recommended that: (1) school districts should be given specific statutory authority to employ independent school attorneys; (2) graduate schools of education, law schools, and professional organizations should offer school law courses, seminars, and in-service training conferences for school attorneys, board members, school administrators, and teachers; (3) school attorneys, with the assistance of the superintendent and the board of education, should attempt to practice more preventive law; and (6) further research should investigate the ways in which the various state support offices to education could be more helpful and useful to school attorneys, superintendents, and school boards.²

Financial Arrangement

If there is any source of conflict in an attorney/school client relationship, it is usually in the payment of legal fees for services. As soon as a school law attorney is selected or retained, arrangements for compensation, billing, and payment should be agreed upon by the parties.³ As a practical matter, this arrangement should be reduced to writing. A change in circumstances or parties is unforeseeable.

Most boards now employ an attorney on a retainer basis, and consider the attorney a prominent member of the decision making team wrote

¹Ibid.

²Ibid., p. 8.

³Bartlett, op. cit., p. 9.

Thomas A. Shannon in How School Administrators Work with Attorneys--
An Attorney's Point of View.¹ Some states do not permit the employment of counsel on a retainer basis, but only in cases where actions may be instituted by or against any school officer to enforce any provision of law.² However, there is no doubt that school funds cannot be used to pay costs or counsel fees in actions brought ostensibly for the benefit of private persons.³

A retainer fee can have a variety of meanings. It may be a minimum fee, an average monthly fee or yearly expenses, or a maximum fee for legal services over a specified period of time.⁴ A retainer is usually a fixed fee for routine legal services for so many hours per month. This insures the client of on-call, immediate, and individual attention. The school law attorney is expected to keep up with developments in the community and the law which may have an effect on the school district. If routine work is infrequent as it might be a small school district, an attorney should be retained on an hourly basis. If a legal controversy develops into a situation requiring litigation or other major legal work not contemplated as part of the routine legal services, then, in the case of litigation, it would be best to have a fee arrangement contingent on the

¹Thomas A. Shannon, How School Administrators Work with Attorneys--
An Attorney's Point of View, U.S., Educational Resources Information Center, ERIC Document ED 078 568, 1973.

²Iowa, Code of Iowa, (1973), §279.35.

³"Schools," American Jurisprudence (Rochester, New York: Lawyers' Cooperative Publishing 1936 to date), 68 Am. Jur. 2d.; see also Templin v. Fremont Twp., 36 Iowa 411.

⁴Bartlett, op. cit., p. 7.

outcome of the lawsuit. Otherwise, stated Richard Gatti in a telephone interview as to major legal work such as reorganization or collective bargaining, legal fees should be on an hourly basis in addition to the fee arrangement used for routine legal services.¹ For example, stated Mr. Gatti, a school district may need routine legal services in the form of a written opinion on a legal matter and the school district prefers to have the school law attorney attend school board meetings once a month to ask and answer questions of general legal information or give advice on matters which may have potential legal consequences.² Mr. Gatti also stated that this would take, for example, ten hours per month at a cost of approximately thirty to forty dollars per hour which could be paid on an hourly basis (attorneys usually charge by the tens of minutes) or on a retainer basis at a flat fee of three hundred dollars per month. Decisions as to hourly, retainer, or contingent fee arrangements can be mutually agreed upon as situations arise.³

Bartlett wrote that in some states, notably Iowa, the use of retainers to hire an attorney is legally questionable.⁴ It is important that both parties feel free to discuss charges for legal services and method of billing at any time.⁵ School administrators or school board members should never hesitate to request an advance estimate of legal fees.

¹Statement by Richard Gatti, Attorney, personal phone interview, Salem, Oregon, April 8, 1977.

²Ibid.

³Ibid.

⁴Bartlett, op. cit., p. 10.

⁵Ibid.

Oftentimes, an exact figure is difficult because legal matters are rarely estimable to a specific dollar. Generally, attorneys bring up the matter of legal fees in the initial interview and are not uncomfortable about making projections as to costs based on the school districts' legal needs.¹ In fact, the attorney should properly advise the school district as to the best method of fee and billing arrangements based on the particular needs of the school district. Billing and payment of fees should not be allowed to become areas of disagreement. Billing and payment should be made monthly.² This will give the school district and the attorney an opportunity to evaluate the return received in relation to costs and the time involved in providing legal services.³

Dismissing the Attorney

The school district as a client always has the prerogative of dismissing the attorney at any time. Generally, however, stated Bartlett, this is an "unlikely occurrence" except when serious failings have occurred on the attorney's part or when the school administration has not been diligent in its supervision of attorney utilization.⁴ If any dissatisfaction does occur, the client should confer with the attorney as to the reasons for any disaffection. Once given the opportunity to discuss problems, an attorney should explain any actions and alter the approach to conform with the client's wishes.⁵ Misunderstandings are inevitable between two professionals who are resolving the same conflicts from different points of view, but attorneys are not often offended by frank

¹Ibid.

²Ibid.

³Ibid.

⁴Ibid., p. 9.

⁵Ibid.

discussions of problems within the context of the professional relationship. They are trained to serve in their client's best interests and will do their professional best to represent those interests.

Procedure for Initiating Attorney Contact

As noted earlier, the attorney's primary role is to practice preventative law and to protect the school district from legal challenges on management policy decisions. Bartlett stated in his mimeograph that in keeping with this activity school boards should authorize the superintendent and other specified staff members to contact the school law attorney when they find the need to do so.¹ It is important to allow administrators the freedom to contact the attorney either by telephone or letter whenever they think that there are potential problems which should be brought to the attention of the attorney.² When and how the attorney should be consulted should be in writing and distributed to all authorized staff members.³ Emergency situations should be covered in advance so that potential legal liability may be minimized.

The superintendent should be the primary person who contacts the school attorney, but variations in the size of the district and the potential for legal situations may require special communication lines to the attorney for certain staff members.⁴ Principals and guidance counselors may avoid legal consequences by immediate contact when students face various legal difficulties.⁵

Generally, board members raise legal questions for the attorney through the superintendent, but at times communication with the

¹Ibid., p. 12.

²Ibid.

³Ibid.

⁴Ibid., p. 13.

⁵Ibid.

administration becomes unsatisfactory or matters at issue may be contradictory to the interests of the administration.¹ When this situation arises board members must personally contact the attorney as the board of education retains the services of the attorney, not the administration.²

General Legal Counsel

Even though school administrators are becoming aware of their legal rights, duties, and responsibilities through professional associations and periodicals, no amount of diligence can keep the administrator fully aware of the legal pitfalls which arise from the many decisions made daily.³ Since attorneys have a community interest and try to keep current in local events, they have numerous noneducational contacts in the community and have many sources of information through which they often become aware of potential legal problems effecting policy in the school district.⁴

Therefore, it is a sound policy to create and maintain good communications through a close-working relationship with the attorney.⁵ This provides the critical legal analysis necessary to assist school administrators in decision making where problems may arise.⁶ Edwin Perry, an attorney from Lincoln, Nebraska, who represents numerous school districts on a regular basis said it this way:

One of the major difficulties appears to be something of a fear on the part of school boards that they will be spending more money than is reasonable for legal services. It would be our (his law partners) reaction that quite often they are 'penny wise and dollar foolish'. If they would talk to a legal representative

¹Ibid., p. 14.

²Ibid.

³Ibid.

⁴Ibid.

⁵Ibid., p. 15.

⁶Ibid.

and have confidence in a legal representative treating them in a professional and fair manner with regard to his services and charges for the services it would in many situations avoid both problems and expense, both legal and otherwise, that they incurred because they have not been willing to spend comparatively small sums for legal counsel to begin with.¹

The administration can cope with some legal problems in advance or at least lessen the severity of their impact.² This type of trusting and communicative relationship should add to the quality of education in the community and decrease the overall legal expense of the district.³ This encourages the school attorney to become familiar with the administrative operation of the school district and encourages the attorney to take a more active part in the decision-making process.

Bartlett wrote:

School administrators must recognize and utilize the talents of competent attorneys available in the community. Through a good working relationship with an attorney they will be better able to stand fearless by the educational decisions they make.⁴

Attorney as Board Member

It is not unusual for a school board to have an attorney as a member of the board. Members should be cautioned against thinking of the attorney as a board member who may be used to provide legal advice. It should be clear that the attorney was elected as a board member and not as the school attorney. As a member of the board, the attorney's responsibility is to pass on policy questions and not determine the legality of a course of action. Bittle advised that the effectiveness of the attorney as a board member policy maker will be greatly diminished if he or she is asked to fill the role of legal counsel.⁵ In determining board policy

¹Ibid., p. 16.

²Ibid., p. 15.

³Ibid.

⁴Ibid., p. 16.

⁵Bittle, op. cit., p. 2.

arguments, a debate by the attorney may be given undue weight if personal opinions are accepted as legal opinions.¹ If a question arises about the school legality of one course of action over another, then the school attorney's opinion should be sought, and after the school attorney has defined the legal guidelines, the board may make policy decisions within those guidelines.² If the school attorney reviewed the agenda of the board before its meeting or personally attended those meetings which necessitated a discussion of the legal ramifications of board policy, potential legal consequences could be averted.³

Attendance at Board Meetings

Should the school attorney attend all board meetings? A number of factors would indicate very definite reasons for answering this question affirmatively. Note, however, that it is advisable to make a primary consideration by weighing the benefits against the expense. The length and frequency of meetings must be considered as it may not be economically feasible to pay an attorney to sit at a board meeting where legal advice and counsel may not be frequent.⁴ There is some indication that larger school districts have more frequent and pressing legal issues than smaller districts and may necessitate regular attendance of the school attorney.⁵

Many problems may be handled between the superintendent and the school board attorney over the telephone prior to a board meeting. Thus, eliminating the need for the school attorney to attend the meeting and,

¹Bartlett, loc. cit.

²Bittle, loc. cit.

³Ibid.

⁴Bartlett, loc. cit.

⁵Ibid.

thereby, save time and money.¹ In any event, it would be unfair to the attorney to pose legal questions at a public board meeting without advance notice, since such action does not allow for legal research and reflection.² Off-the-cuff opinions should be avoided as to save embarrassment on both sides.

If an occasion arises where an attorney forgets the function of the school attorney and enters discussions which are nonlegal and discretionary board matters, an attorney should be tactfully reminded of his or her position as a member of the decision-making team. A short recess might be a good opportunity to mention the situation.

Litigation

M. Bryon Fisher wrote in Problems of One School Board Attorney that litigation can be extremely costly in terms of district finances, public relations, and staff morale.³ The board of education should not feel embarrassed to ask the attorney for an estimate of the costs involved in litigation, both as to the potential outcome of the case and as to attorney fees (see the discussion under Financial Arrangement, pages 38-41). A school district may have legal rights which are simply not worth pursuing for one reason or another and these alternatives should be discussed. Whenever a school district finds it necessary to initiate a legal action or defend a lawsuit or an administrative agency hearing, a procedure

¹Ibid.

²Ibid., p. 11.

³M. Bryon Fisher, Problems of One School Board Attorney, U.S., Educational Resources Information Center, ERIC Document ED 113 843, 1975, p. 8.

should be established which clearly outlines the relationship between the attorney and the school district.¹ Fisher stated that probably the most common problem in this area is that the school attorney is brought into the situation too late to be of greatest assistance in potential litigation.² In some situations it may be necessary for the attorney to prepare an initial analysis of the legal issues describing the facts and laws and outlining a recommended course of action. The experienced trial lawyer should periodically report to the school board and inform the members of significant progress in a case involving litigation. Once the board of education has reached a decision to actually initiate a lawsuit, it will have to give the greatest possible freedom to its attorney as to the choice of methods in handling the litigation.³ It is to be expected that the attorney will fully explain legal procedures. In many instances the attorney will give the board an opportunity to exercise the option as to what particular course of action it should take. In such circumstances, however, the attorney will usually make a specific recommendation.⁴

The attorney will keep a complete file as to all matters relating to litigation. Any records or files are the property of the school district. At the end of the litigation or termination of the attorney's services, all documents should be returned to the school district or the regularly employed counsel if special counsel was retained.⁵

Usually in tort liability situations, insurance companies demand control of any litigation which might result in their liability to pay

¹Bartlett, op. cit., p. 16.

²Fisher, op. cit., p. 13.

³Ibid.

⁴Ibid., p. 15.

⁵Ibid., p. 6.

money damages under an insurance policy protecting the school district. The attorneys representing the insurance companies are in reality representing the school district.

The school attorney should work as closely as possible with the insurance companies' attorneys. The manner in which such attorneys conduct litigation on behalf of the defendant school district may have significant legal and public relations aspects.¹

Continuing Legal Education

Many publications and organizations exist to aid administrators and school law attorneys as to current legal developments and for professional growth in the school law area. The National Organization for Legal Problems of Education (NOLPE) was organized at Duke University in 1954. NOLPE conducts an annual two-day conference with prominent figures speaking on timely school law subjects. NOLPE publishes the School Law Reporter, which reports or cites all cases from courts of record in the United States on a quarterly basis. Another publication of NOLPE is NOLPE Notes which reports on current items of interest, including new school publications, activities of NOLPE members, new cases filed, trial court decisions and other timely topics on school law. Other organizations include the American Association of School Administrators, the National Association of Secondary School Principals, and the National School Boards Association which has a section for School Board Attorneys.

The school attorney in particular should become a member of one or more of these organizations or at least subscribe to the various

¹Ibid.

publications they offer. This demonstrates that the school attorney keeps up with changes and trends in the executive, legislative, and judicial branches of government at the state and federal levels.

THE ATTORNEY AS A MEMBER OF THE SCHOOL MANAGEMENT TEAM

It takes a diversity of talent to effectively administer the schools. In fact, the legal and social environment in which school administrators must function have led many superintendents to conclude that the attorney could better serve the school district in public education with a position of direct line authority in the administration.¹ Note, however, that in whatever capacity the attorney serves, he or she should be considered as a member of the management team of the school district.²

Many universities are developing programs to train lawyer/administrators. For example, the University of Nebraska instituted a formal program in 1975 which enables a person to acquire a Juris Doctor (J.D.) and a Doctor of Philosophy (Ph.D.) in Educational Administration through a dual degree program.³ Although a long program of five to six years of law and graduate study, it demonstrates a response to a growing need for specialists who comprehend the complexities of our educational and legal systems.

The primary objective of such a program is to produce lawyer/administrators whose training will enable them to perform both the tasks

¹Shannon, op. cit., p. 2.

²Ibid.

³University of Nebraska-Lincoln, Dual Degree Program for Law and Education (Education Administration), Administered by the Department of Educational Administration through the Graduate College, and the College of Law, 1975.

of an attorney and an administrator. It becomes evident that there is a need for legal practitioners and educators to understand the language, needs, and techniques of each respective profession.¹

In order to understand the nature of legal and educational institutions and the ensuing problems of today, it is essential that individuals be fully trained and qualified in both disciplines. This is necessary to integrate educational administrative theory and law to apply to educational problems.² The ultimate ability of the lawyer/administrator will be to identify, understand, and reason in the language and thought processes of the two disciplines. It is hoped the specialist will generate new insights into the problems of dealing with the legal system and integrate administrative theory and techniques with legal trends and development.³

The "new professionalism" of administrators caused by the dramatic social changes in our society must be able to work under the new systems of state law and federal project regulations. In this way the lawyer/administrator serves in three capacities. First, as an advisor on the law of public education; second, on the governance of public school districts; and third, as the attorney in litigation.⁴

The "new professionalism" requires that with the construction of new legal standards the school administrators must be guided by the lawyer/administrator in the exercise of discretionary administrative power.⁵ The "new professionalism" does not involve a surrender of power vested by state statutes and the school boards, but demands a change in

¹Ibid.

²Ibid.

³Bartlett, op. cit., p. 15.

⁴Ibid.

⁵Shannon, op. cit., p. 6.

the methodology of control.¹

The "new professionalism" is one which involves a change from a "philosophical standpoint" . . . an awareness that society is in an ever-evolving status . . . a willingness to accept the fact of change . . . a strong motivation to understand the nature of change and the impelling reasons for change . . . a desire to participate positively and constructively in the dynamics of change . . . and, an ability to work in the change process.² As each individual case arises with parents, students, teachers, and interest groups such as minority groups, the National Education Association, etcetera, or any other interested individuals, education becomes fertile soil for change by judicial law-making.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 21 L.Ed. 2d. 731, 89 S.Ct. 733, (hereinafter cited as Tinker), illustrates the impact of changing standards by showing how the laws are subject to interpretation and how trained legal technicians are needed to outline the implications of new legal standards and, furthermore, how such decisions affect the formulation of new board policies for the public school district. In Tinker, the wearing of black armbands by public school students during school hours as a symbolic act to publicize their objections to the hostilities in Vietnam and their support for a truce is entirely divorced from actually or potentially disruptive conduct by those participating in it, and as such is closely akin to "pure speech" which is entitled to comprehensive protection under the First Amendment.

¹Ibid.

²Ibid., p. 8.

There was no evidence presented that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students or that the prohibition was necessary to avoid material and substantial interference with schoolwork or discipline.

Shannon concluded that school administration has shifted:

(1) Today's school administrators are clearly set apart from those of yesterday; and (2) The position of the school administrator is sharply separated from every other position in the gamut of education generally.¹

Shannon cited nine differences which were described as follows:

1. The administrator is under the law not that they are the law, that is, the effect of changing federal and state laws, for example, legislative action affecting administrators' control . . . , collective bargaining, the courts' interpretations of the federal and state constitutions, changing life-styles, and the economy with its demand for highly-trained personnel and rejection for the unskilled for which administrators must be guided by these standards in exercising discretionary power.

2. Administrators must deal with eighteen-year-olds as adults.

3. A new style of leadership must be developed because the "father figure" is outmoded and the "new professionalism" stresses collegiality and a more democratic participatory approach, but limited by the responsibilities of the law and collective bargaining-type contracts in the school district.

¹Ibid., p. 10.

4. The administrator must adapt to a more well-educated class of parents able to articulate and influence school policy.

5. Administrators must adapt to expanded expectations of education because poorer people have awakened to the call to better themselves.

6. Administrators must deal with a wider spectrum of organized groups of citizens.

7. Administrative decisions are vulnerable to judicial and legislative review of leadership decisions.

8. School boards are closer to people and involved politics, and

9. Administrators are expected to work more closely with groups not only on local, but state and national levels.¹

The school law attorney must know more than just the law affecting school governance and administration. The attorney must know the "style of administration" to "get to know" the superintendent and the administrative staff in order to understand their educational goals.² This helps the attorney know in what direction the school district is going and facilitates an easy personal relationship for more effective verbal communication and ultimately the best course of action. This type of professional arrangement will help to formulate legal opinions that may require immediate answers to pressing legal problems rather than a formal memorandum.

Answers to many questions relating to legal services have been lacking due to the limited amount of research available on the role of the school attorney in school administration and school board functions

¹Ibid., p. 16.

²Ibid., p. 18.

noted Stover in his work School Board Attorney: A Friend in Need.¹

Answers are needed to cope with the increasing number of issues which are vital to the operation of schools and are constantly being tested in the courts.² Additional research and study on the role and function of the school attorney is needed in order to guarantee adequate legal services for the efficient operation of our educational programs.

As discussed previously, courts prefer not to delve into the operation of a school system. Courts continue to be of the opinion that once school authorities have acted with due consideration of the rights of students, teachers, and staff, and that the enacting of codes, rules and regulations are in the best interests of the educational process, the judicial system prefers to leave the operation of the schools to the professionals.

French concluded that if administrators follow this advice, they are assured of five basic rights:

1. School authorities have the right to operate their school systems in a fair and just manner without judicial intervention.
2. School authorities have the right to confer and negotiate with teachers, students, and parents.
3. School authorities have the right to determine the operation and procedural guidelines subject to statutory edicts.
4. School authorities have the right to exercise their discretion and professional judgment with respect to the enactment of policy; and

¹Kermit M. Stover, School Board Attorney: A Friend in Need, U.S., Educational Resources Information Center, ERIC Document ED 029 389, April, 1969, p. 18.

²Ibid.

5. School authorities have the right to expect full cooperation and assistance from members of the community, as well as those persons responsible directly to the board of education.¹

¹French, op. cit., p. 6.

Chapter 4

PRESENTATION AND ANALYSIS OF DATA

TWENTY-FIVE SPECIFIC RECOMMENDATIONS

If a school district is involved in the selection process of an attorney to represent the school district as a school law attorney, it is suggested that the following checklist of twenty-five specific recommendations be considered in the selection process. The checklist is derived from the expanded review of related literature and personal interviews.

Checklist for the Selection of a School Law Attorney

- _____ (1) Does the attorney have a genuine interest in the development of sound educational policy?
- _____ (2) Does the attorney have any experience as an educator either as a teacher or administrator or has the attorney studied educational administration?
- _____ (3) Does the attorney participate in organizations which specialize in school law such as the National Organization of Legal Problems of Education, the State Education Association, and the National School Boards Association?
- _____ (4) Does or will the attorney maintain a close association with other school law attorneys and other experts to benefit by a constant interchange of ideas that will benefit a school district?
- _____ (5) Does the attorney plan to maintain a close liaison with the board secretary or board business administrator and with the school administrators to keep abreast of activities in the school system?
- _____ (6) Has the attorney had courses in Labor Law, School Law, Administrative Law, or other related course work, seminars, conferences, workshops, etcetera?

- _____ (7) Is the attorney knowledgeable or had experience in the field of administrative law and procedure with respect to both state and federal governments?
- _____ (8) Does or will the attorney have a working knowledge of the rules and regulations of the State Board of Education?
- _____ (9) Is the attorney knowledgeable about the education laws of the state, judicial decisions, and trends in other states?
- _____ (10) Does the attorney keep abreast of proposed legislation and changes in existing legislation at the state and federal levels?
- _____ (11) Is the attorney well versed on significant federal judicial decisions?
- _____ (12) Is the attorney prepared to participate in collective bargaining negotiations, draft bargaining agreements with teachers, and qualified to participate in other union related matters?
- _____ (13) What preparation has the attorney had in collective bargaining such as experience with impasse procedures or grievance procedures?
- _____ (14) If there is already a collective bargaining agreement, is the attorney prepared to aid in the administration and interpretation of the agreement?
- _____ (15) Do the members of the board believe that the recommendations of the attorney candidate will lead to a smoother and more efficient operation of the school system from a legal point of view?
- _____ (16) Is or will the attorney become familiar with the rules of parliamentary procedure which is frequently used during the course of board meetings?
- _____ (17) Is the attorney knowledgeable about contract procedures as blueprint reading, building specifications, notices to bidders, bidding procedures or construction problems?
- _____ (18) Is the attorney familiar or willing to become familiar with insurance matters, transportation, accounting procedures, etcetera?
- _____ (19) Does the attorney know when to advise the board to stop public discussion in certain sensitive areas and to recommend discussion in executive session in areas which could lead to disharmony in the school system?

- _____ (20) Do the members of the board believe that when the attorney candidate is called upon to make legal decisions that they will not be based on political persuasion, that is, not tailored to meet the individual or collective desires of the school board, but based upon an understanding of the law?
- _____ (21) If the attorney becomes aware of practices by the board which are not consistent with what changes have occurred in the law, will the attorney diplomatically advise the board to cease and desist from such practices without offending the members of the board?
- _____ (22) Although the attorney does not attempt to formulate policy, if it becomes obvious that current school board policy is contrary to law, will the attorney advise the board and recommend proper legal policy?
- _____ (23) Does the attorney have experience as a trial lawyer or an association with one who may represent the board in litigation and administrative hearings before various agencies?
- _____ (24) Will the attorney be readily accessible in emergency situations?
- _____ (25) Is the attorney's personality such that relationships between the school board, administrators, and staff will be harmonious?

ANALYSIS OF RECOMMENDATIONS

From a review of related literature, a descriptive summary was made of the various types of legal services which may be used by a school district and conclusions were made about the interdependent relationships among the board of education, superintendent, the teaching staff, and the school law attorney.

The above checklist is a set of twenty-five specific recommendations outlining criteria that are important practical considerations in the selection of a school attorney. The list is not all inclusive and must be adapted to each school district. The attorney may not meet all of the criteria, but must meet a significant number of criteria to

competently represent the school district. In the last analysis, if all other criteria are equal, the superintendent, with board approval, should make the final determination based on the attorney's personality to insure harmonious relationships (see number 25, page 58).

Chapter 5

SUMMARY AND CONCLUSIONS

RESTATEMENT OF THE PROBLEM

The complex legal issues which confront everyone in the school district demonstrated the critical need to: (1) examine the types of services offered by the school law attorney, (2) analyze the interdependent relationships between the administrators, members of the board of education, teachers, and the school attorney as a member of the school management team, and (3) establish a set of specific recommendations as important practical criteria for use in the selection of a school law attorney.

DESCRIPTION OF PROCEDURES USED

An exhaustive survey approach of related literature and personal interviews was used to gather data for this study. A systematic analysis of the related literature was limited to currently available legal materials and other sources in print from basic library research found in graduate and law school libraries.

This field report examined and summarized the types of legal services most often needed by school districts and the interdependent relationships as determined by the related literature as to what criteria are needed for the selection of a school attorney. All sources are documented, critically compared, and evaluated for authenticity and validity

of content by statutes and case law decisions. From these data a checklist of specific recommendations was made as to the type of criteria which can be used in the selection of a school attorney.

PRINCIPAL FINDINGS AND CONCLUSIONS

Data were scarce and difficult to gather with great accuracy. However, a list of twenty-five criteria was derived from the various types of legal services which may be performed by the school attorney and from an analysis of the various interdependent relationships. The list of twenty-five criteria was set forth in such a way that boards of education could use the criteria as a checklist to determine what type of school attorney they would select on the basis of legal knowledge, skills, experience, and personality.

Although few school attorneys would meet all twenty-five of the recommendations, each school district must decide what their individual requirements are and choose from available candidates that person who most nearly meets a significant number of the established criteria. If only twenty of the criteria are needed to provide adequate legal service to the school district, then use those criteria to choose the candidate who significantly or more nearly satisfies the twenty criteria.

RECOMMENDATIONS FOR FURTHER STUDY

More research is needed to specifically define the role and, in turn, the criteria to be used in the selection of the school attorney. The criteria established in this field report must be continuously updated, expanded, and adapted to the particular legal problems of each school district.

The public is demanding more and more from educational institutions through legislatures at both state and federal levels and by forcing issues into the judicial process. All of which dramatically reveals the necessity to obtain the services of a specialist in school law as either (1) outside counsel, or (2) a member of the school management team as a lawyer/administrator.

To that end this field report offers the twenty-five specific recommendations in checklist form to be used by members of a board of education in the selection of a school attorney.

More research is also needed to learn about how a school district may make better use of the services of a school attorney. This could reduce the need for legal services by anticipating potential legal problems and, thereby, practice preventative law.

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APPENDIX A

Position Description SAN DIEGO UNIFIED SCHOOL DISTRICT

SCHOOLS ATTORNEY AND ASSISTANT SECRETARY OF THE BOARD OF EDUCATION

- A. Primary function: To provide direct, full-time professional legal counsel and representation for the Superintendent, the staff, and the Board of Education on school district matters only as Schools Attorney and to provide the quasi-legal office management services required by the Board of Education as Assistant Secretary of the Board
- B. Directly responsible to: Superintendent and the Board of Education
- C. Immediate subordinates: Recording Secretary of the Board, and other staff as assigned
- D. Assigned responsibilities:
1. Prepares and conducts litigation and administrative law hearings as directed by the Superintendent and as authorized by the Board of Education. Does all things necessary or desirable in conjunction therewith on behalf of the school district, including, but not limited to, the preparation of all pleadings and trial and hearings at the level of original jurisdiction or on appeal, and all other court or hearing appearances in order to represent most effectively the interests of this school district, as such interests are interpreted by the Superintendent.
 2. Prepares and renders legal opinions upon request to the Superintendent, the staff, and the Board of Education or any member thereof.
 3. Attends and provides legal advice at all meetings of the Board of Education and such other meetings as the Superintendent might direct.
 4. Prepares all documents incident to the noticing, calling, and conducting of school tax rate increase elections and school bond elections.

5. Provides legal assistance in the drafting of legal documents, rules and regulations, resolutions, applications of diverse kinds, and all other legal or quasi-legal type papers upon request.
6. Provides legal assistance in the drafting of state legislation proposed by this school district for presentation to the California State Legislature.
7. Maintains a current file of all legislation introduced in the State of California legislature and interprets the impact of such legislation on the interests of this school district as such legislation is being considered by the state legislature.
8. Prepares agenda and notices for all meetings of the Board of Education, supervises the recordation of the minutes of such meetings, and acts as the custodian of the official records of the Board.
9. Conducts all official correspondence for the Board and responds to informational inquiries from members of the Board of Education in order to assist the Superintendent in keeping relevant information current among all members of the Board.
10. Maintains files on policy actions of the Board of Education and supervises periodic revision of the Rules and Regulations of the Board.
11. Performs other duties as assigned.

APPENDIX B

SAMPLE RETAINER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of ____, 19 __, by and between the Board of Education of Unified School District No. __, _____ County, Kansas, hereafter called "The School District," Party of the First Part, and _____, an attorney at Law in _____ County, Kansas, hereinafter called "The School Attorney," Party of the Second Part,

WITNESSETH:

The School District hereby retains and employs The School Attorney for its legal business, subject to the direction of the board of education of the School District, at a retainer of \$ _____ per year, payable in equal monthly installments at the end of each month, and the School Attorney accepts such retainer and employment and agrees that such amounts paid hereunder shall be in full for all services rendered by said School Attorney to the School District, except as otherwise provided for herein.

Said School Attorney shall keep the School District advised of the character and progress of all legal proceedings and claims and actions by and against the School District or in which the School District is interested; and all bills for expenditures or involving the payment of money therewith shall be certified by said School Attorney and sent to the School District by said School Attorney for examination and approval.

Said School Attorney may be consulted at all reasonable times by the board of education of said School District and by the Superintendent thereof or any person whom the board of education of the School District

may designate from time to time with respect to all business and matters requiring professional legal advice, and said School Attorney shall give written opinions to questions presented by the board of education of said School District or by its Superintendent.

The School Attorney shall keep in his office a docket in which he shall cause to be recorded all proceedings connected with any action, claim or legal proceedings in which the School District is interested and shall also keep such other records as may be necessary to preserve a complete history of the legal business of the School District entrusted to his charge. Such docket and such other records shall be the property of the School District and it shall at all times be subject to the inspection and control of the School District.

Said School Attorney shall, whenever requested by the board of education of the School District or Superintendent, take immediate measures to investigate the facts and ascertain the legal position of the School District concerning any accident, claim, liability and legal question involved in connection with the School District's business, and shall in each case promptly do what may be required for the protection of the interests of the School District, but he shall have no authority to enter into any agreement or contract or initiate any legal proceedings other than at the direction of or subject to the approval of said School District.

The School Attorney shall appear at any meetings of the Board of Education of said School District at the request of the School District or of the Superintendent thereof, when it appears that matters are placed on the agenda for the meeting of the Board of Education of said

School District which may involve the necessity or advisability of having legal advice available at such meetings. The School District agrees to forward to the School Attorney a copy of the agenda of each board meeting and to give reasonable notice to the School Attorney so that he may appear at said meeting or a partner or associate of the School Attorney may appear should the School Attorney unavoidably be unavailable for appearance at such meeting, should it be reasonably necessary or advisable for said attorney to appear. The School Attorney agrees to examine the agenda, and even though not requested to appear, will advise School District if, in his opinion, it is necessary or advisable for him to appear at said meeting and will appear at said meeting in order to render his professional advice.

It is understood and agreed that the payment of retainer to School Attorney from the School District shall be in full for all services rendered by the School Attorney to said School District, except as herein-after provided. If, during the continuation of this agreement, it appears to said School Attorney that he is required to render extraordinary services to the School District for which School Attorney reasonably believes that he should be entitled to payment therefor over and above the retainer hereinabove mentioned, said School Attorney agrees to so notify the School District prior to the institution by him of said services and to inform School District of what he considers to be the reasonable value of such extraordinary services. Upon such notification to School District by School Attorney, the School District may agree to pay to School Attorney such sum or sums as the School District deems advisable for such services, but the final determination of the board of education of the

School District as to whether or not the School Attorney shall be paid for such services during said period of this contract shall be binding upon said School Attorney. The School District agrees to review with the School Attorney throughout the duration of this contract, the time records kept by the School Attorney for work performed for the School District and the School District may, at its sole discretion, pay to such School Attorney additional sums for services performed by the School Attorney, should the School District decide that the School Attorney should be entitled to compensation above the amount mentioned in this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this ____ day of _____, 19__.

UNIFIED SCHOOL DISTRICT NO. _____

_____ County, Kansas

By _____

ATTEST:

Clerk, Board of Education

School Attorney

Note: The above sample agreement was drafted by Bill S. Sparks, a member of the Board of Education of Unified School District No. 512, Johnson County, Kansas and a member of the law firm of Linde, Thomson, Van Dyke, Fairchild and Langworthy in Kansas City, Missouri.